

HOUSE BILL No. 1313

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-29.

Synopsis: Tax credit for new employee wages. Provides a tax credit for incremental income tax withholding amounts deposited with the department of state revenue for wages paid to a new employee in a taxable year.

Effective: July 1, 2004.

Buck, Frizzell

January 15, 2004, read first time and referred to Committee on Ways and Means.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1313

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.1-29 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]:

4 **Chapter 29. New Employee Tax Credit**

5 **Sec. 1. As used in this chapter, "excluded employee" means any**
6 **of the following:**

7 **(1) An employee of the taxpayer who performs a job that was**
8 **previously performed by another employee in Indiana, if that**
9 **job existed for at least six (6) months before hiring the new**
10 **employee unless a new employee performs a job that was**
11 **previously performed by an employee who:**

12 **(A) was promoted by the taxpayer to another job; and**

13 **(B) qualified as a new employee before the promotion.**

14 **(2) An employee of the taxpayer:**

15 **(A) who was previously employed in Indiana by a related**
16 **member of the taxpayer; and**

17 **(B) whose employment was transferred to the taxpayer**



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after January 1, 2004.

(3) A child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, of any individual who:

(A) is an employee of the taxpayer; and

(B) has a direct or an indirect ownership interest of at least five percent (5%) in the profits, capital, or value of the taxpayer.

(4) An employee who has a direct or indirect ownership interest of at least five percent (5%) in the profits, capital, or value of the taxpayer, as determined under the rules of the department.

An ownership interest shall be determined under this section in accordance with Section 1563 of the Internal Revenue Code and regulations prescribed under that Section. However, with respect to a pass through entity, in applying Section 1563 of the Internal Revenue Code, the term "interest in the profits, capital or value" shall be substituted for the term "stock".

Sec. 2. As used in this chapter, "full-time employee" means an individual who:

(1) is employed for at least thirty-five (35) hours each week; or

(2) renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

Sec. 3. As used in this chapter, "incremental income tax withholdings" means the total amount withheld under IC 6-3-4-8 by the taxpayer for compensation paid in the taxable year to individuals who qualify as new employees of the taxpayer, excluding any additional withholding made at the election of the employee and exceeding the minimum amount that is required to be withheld for the employee.

Sec. 4. As used in this chapter, "new employee" means a full-time employee who:

(1) is first employed by a taxpayer in Indiana after June 30, 2004; and

(2) is not an excluded employee.

Sec. 5. As used in this chapter, "pass through entity" means a:

(1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) partnership;

(3) limited liability company; or

(4) limited liability corporation.

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1 **Sec. 6. As used in this chapter, "person" means an individual,**
 2 **estate, corporation, pass through entity, or other entity that may**
 3 **sue and be sued.**

4 **Sec. 7. As used in this chapter, "related member" means a**
 5 **person that, with respect to the taxpayer during all or any part of**
 6 **the taxable year, is any one (1) of the following:**

7 (1) **An individual or a child, grandchild, parent, or spouse,**
 8 **other than a spouse who is legally separated from the**
 9 **individual, of any individual, if the individual and the member**
 10 **of the stockholder's family own directly, indirectly,**
 11 **beneficially, or constructively, in the aggregate, at least fifty**
 12 **percent (50%) of the value of the taxpayer.**

13 (2) **A stockholder or a stockholder's pass through entity,**
 14 **estate, trust, or corporation if the stockholder and the**
 15 **stockholder's pass through entity, estate, trust, or corporation**
 16 **owns directly, indirectly, beneficially, or constructively, in the**
 17 **aggregate, at least fifty percent (50%) of the value of the**
 18 **taxpayer.**

19 (3) **A corporation or a party related to the corporation in a**
 20 **manner that would require an attribution of stock from the**
 21 **corporation to the party or from the party to the corporation**
 22 **under the attribution rules of Section 318 of the Internal**
 23 **Revenue Code if the taxpayer owns directly, indirectly,**
 24 **beneficially, or constructively at least fifty percent (50%) of**
 25 **the value of the corporation's outstanding stock.**

26 (4) **A component member (as defined in Section 1563(b) of the**
 27 **Internal Revenue Code).**

28 (5) **A person to or from whom there is an attribution of stock**
 29 **ownership in accordance with Section 1563(e) of the Internal**
 30 **Revenue Code except, for purposes of determining whether a**
 31 **person is a related member under this subdivision, twenty**
 32 **percent (20%) shall be substituted for five percent (5%)**
 33 **wherever five percent (5%) appears in Section 1563(e) of the**
 34 **Internal Revenue Code.**

35 (6) **A pass through entity that would qualify as a related party**
 36 **under subdivision (2) if the pass through entity were treated**
 37 **as a shareholder and an interest in the profits, capital, or**
 38 **value of the pass through entity is treated as stock.**

39 (7) **A pass through entity that would qualify as a related party**
 40 **under subdivision (3), (4), or (5) if the pass through entity**
 41 **were treated as a corporation and an interest in the profits,**
 42 **capital, or value of the pass through entity is treated as stock.**

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1 **Sec. 8. As used in this chapter, "state tax liability" means tax**
 2 **liability that is incurred under:**

- 3 (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
 4 (2) IC 27-1-18-2 (the insurance premiums tax); and
 5 (3) IC 6-5.5 (the financial institutions tax);

6 **as computed after the application of the credits that under**
 7 **IC 6-3.1-1-2 are to be applied before the credit provided by this**
 8 **chapter.**

9 **Sec. 9. As used in this chapter, "taxpayer" means an individual**
 10 **or other entity that:**

- 11 (1) has any state tax liability; or
 12 (2) is a pass through entity.

13 **Sec. 10. A taxpayer is entitled to a credit against any state tax**
 14 **liability that may be imposed on the taxpayer for a taxable year.**

15 **Sec. 11. The amount of the credit is equal to the incremental**
 16 **income tax withholdings that:**

- 17 (1) the taxpayer deposited with the department of state
 18 revenue for compensation paid in a reporting period in the
 19 taxable year; and
 20 (2) is not used to compute a deduction or credit under
 21 IC 6-3-3-10 or IC 6-3.1-13.

22 **Sec. 12. A credit granted under this chapter may not be carried**
 23 **forward or carried back.**

24 **Sec. 13. To claim a credit under this chapter, the taxpayer must**
 25 **provide to the department of state revenue the information**
 26 **concerning new employees and incremental income tax**
 27 **withholding required by the department of state revenue.**

28 **Sec. 14. Any overpayment of incremental tax withholding**
 29 **amounts refunded to a taxpayer reduces the credit available to the**
 30 **taxpayer in the taxable year in which it is taken.**

31 **Sec. 15. If a pass through entity does not have state tax liability**
 32 **against which the tax credit may be applied, a shareholder,**
 33 **partner, or member of the pass through entity is entitled to a tax**
 34 **credit equal to:**

- 35 (1) the tax credit determined for the pass through entity for
 36 the taxable year; multiplied by
 37 (2) the percentage of the pass through entity's distributive
 38 income to which the shareholder or partner is entitled.

39 **SECTION 2. [EFFECTIVE JULY 1, 2004] IC 6-3.1-29, as added**
 40 **by this act, applies only to incremental income tax withholding**
 41 **amounts deposited for compensation paid to employees after June**
 42 **30, 2004.**

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